IN THE

Supreme Court of the United States

October Term, 1965

NUMBER _____

J. P. SHELTON,

Petitioner

VS

THE STATE OF GEORGIA,

Respondent

PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

Now comes J. P. SHELTON, Petitioner in Certiorari, and petitions this Honorable Court for the writ of certiorari to the Court of Appeals of the State of Georgia.

OPINIONS BELOW

The opinion of the Court of Appeals of Georgia is reported unofficially in 141 South Eastern Reporter, 2nd 776, in response to an answer on certified question from the Supreme Court of Georgia on another question in

220 Ga. 610, (140 South Eastern 2nd 839.) The opinion of the Court of Appeals is appended hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1965, and a timely motion for rehearing filed on March 10, 1965, was denied March 16, 1965. A petition for certiorari to the Supreme Court of Georgia was filed April 14, 1965 and denied by that Court without opinion on May 10, 1965. An extension of time within which to file petition for certiorari was granted by Mr. Justice Hugo Black on August 3, 1965, granting petitioner until September 7, 1965, within which to file this petition for certiorari. The jurisdiction of this Court is invoked under Title 28, U.S.C. 1257 (3), giving this Court jurisdiction to grant certiorari to the final judgments of the highest court of a State in which a decision could be had, where any title, right, privilege or immunity is specially set up or claimed under the Constitution of the United States.

QUESTION PRESENTED

Whether a defendant, charged with a criminal case in a State Court, has standing under the Fourth and Fourteenth Amendments to object to the introduction in evidence of papers and articles obtained through an illegal search and seizure of a parked vehicle by State officers, acting without consent and without a search warrant, when the indictment in the case charges the defendant with the unlawful possession of the automobile being illegally searched.

THE CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT FOUR to the Constitution of the United States:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

AMENDMENT FOURTEEN to the Constitution of the United States:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

Petitioner was indicted in the Superior Court of Fulton County, in the State of Georgia, on a three count indictment charging him with (1) larceny of an automobile, (2) having, buying and receiving the automobile, knowing it was stolen and (3) unlawfully possessing the same automobile, knowing at the time that an identification number had been falsified. Petitioner filed a pretrial motion to suppress the evidence. The trial court denied the motion without hearing evidence, and the motion was renewed after the jury had been empaneled, and during the trial of the case objection was made to the testimony of Captain Brown, a witness for the State, as to the results of a search of the automobile, alleged by the State to have been received and possessed by the defendant, on the ground that the search was conducted without a warrant. The objections and motions to suppress were

overruled, and the testimony of Captain Brown was permitted to go to the jury, including the introduction in evidence of certain checks and other articles found in the trunk of the car by the witness bearing the fingerprints of the petitioner, and the discovery by the witness that the identification number of the vehicle had been falsified and changed.

The testimony further disclosed that at the time the vehicle was searched it was not a moving vehicle, having been previously impounded, and was stored in a parking lot; that the witness had sufficient time to secure a search warrant; and that the witness did not have probable cause for making the search of the vehicle.

The petitioner was found not guilty of the first count charging the larceny of the automobile, but was found guilty on the second and third counts which both charged the petitioner with the possession of the vehicle. On appeal to the Court of Appeals of Georgia on this same question, and others, (the Court of Appeals having certified another question to the Supreme Court of Georgia) a new trial was ordered on the ground that the trial Court had improperly refused to allow a defense witness to testify, but the Court of Appeals also passed on the question of the admissibility of the evidence that was shown to have been seized from the same automobile to which petitioner had possessed, holding that such evidence "was not procured from any search of the defendant, or of any search of his residence or place of business, *or from an automobile to which he claimed a right of possession at the time the evidence was offered,* but from the allegedly stolen automobile after the police had determined that it was a stolen automobile."

The Court of Appeals then concluded this ground against the contentions of petitioner by holding:

> "A defendant *cannot successfully object* to testimony offered against him, on the ground that it was obtained by an illegal search and seizure of another person. This ground of the motion for new trial was properly overruled."

REASONS RELIED UPON FOR GRANTING WRIT OF CERTIORARI

1. Under the Georgia rule of "the law of the case" the ruling of the Georgia Court of Appeals, on the question of the standing of the defendant to complain of the illegal search of a vehicle alleged by the State to have been in his possession, will become binding authority on the trial court on a retrial of the case, whether right or wrong, and on a subsequent appeal of this same question not only the trial court, but the appellate courts of the State of Georgia would be bound thereby, and petitioner's constitutional right to challenge an illegal search would be lost forever. *Bryant* v. *State, 197 Ga. 641 (1), 30 S.E.2d 259.*

2. The Court of Appeals of Georgia refused to make a factual determination of the legality of the evidence obtained by the State officer, and declined to pass on the factual question as to whether the search of the vehicle was lawful or unlawful, but predicated their ruling on this important question solely on the ground that the petitioner "cannot successfully object" to the introduction of such evidence *because he had no standing to complain.*

3. The Court of Appeals of Georgia refused to rec-

ognize the case of Jones v. United States, 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed. 697, holding that in a case *"where the indictment itself charges possession,"* the defendant has standing to have the evidence suppressed, even though he fails to claim ownership or right of possession of the property or premises.

4. The Court of Appeals of Georgia refused to recognize Lanza v. New York, 370 U.S. 139, where this Court, in further approving the Jones case, supra, held that "in the eyes of the Fourth Amendment an automobile may not be unreasonably searched."

5. The Court of Appeals of Georgia also refused to recognize or apply the case of Jeffers v. United States, 187 F. 2d 498, affirmed 342 U.S. 48, 72 S. Ct. 92, where it was held that the right to the exclusion of illegally obtained evidence "does not depend on right to retain or repossess the property."

ARGUMENT AMPLIFYING REASONS RELIED UPON

Inasmuch as the Georgia courts recognize the "law of the case" rule as binding on them on a subsequent appeal, the petitioner's constitutional right to complain of the validity of the search and seizure will be lost forever if the Court of Appeals of Georgia does not decide the legality of the search and seizure in this case.

It is no valid or rational answer that the Court of Appeals finally found error in the trial court, and thus granted petitioner a new trial de novo on a State procedural error. The fact remains that the Georgia courts, up to and including the Supreme Court of Georgia by the refusal to entertain the petition for the writ of certiorari, have taken away petitioner's last right to complain of the outrageous conduct of one of its officers in rummaging through and tearing up a vehicle over which the petitioner, at that time, was powerless to control.

The jury found petitioner not guilty of the larceny of the vehicle. Thus, the only question that remains is whether petitioner had standing to object to the search of a vehicle alleged to have been in his possession by the allegations of the indictment; the instrument by which the State of Georgia maintains the right to prosecute this petitioner.

In Jones v. United States, 362 U.S. 257, it was held by this Court that a defendant had standing to complain of an unlawful entry and subsequent seizure of contraband *notwithstanding he testified that property seized was not his,* and that place of arrest was not his home. This Court held:

> "To hold that petitioner's failure to acknowledge interest in the narcotics or the premises prevented his attack upon the search, would be to permit the Government to have the advantage of contradictory positions as a basis for conviction. Petitioner's conviction flows from his possession of the narcotics at the time of the search. Yet the fruits of that search, upon which the conviction depends, were admitted into evidence on the ground that petitioner did not have possession of the narcotics at that time. The prosecution here thus subjected the defendant to the penalties meted out to one in lawless possession while refusing him the remedies designed for one in that situation. It is not consonant with the amenities, to put it mildly, of the administration of criminal justice to sanction such squarely contradictory assertions of power by the Government."

The failure of the Court of Appeals to determine the validity of the search and seizure in by-passing the issue with a ruling that the petitioner had no standing to complain, and in reversing the conviction and granting a new trial on an unrelated ground, has frustrated petitioner's constitutional right to attack the admissibility of the evidence procured as a result of the search and seizure by operation of the "law of the case" rule as applied by the Georgia courts. Petitioner is faced with another trial on the merits, legally unable to assert a successful objection to incriminating articles that may otherwise have been held inadmissible.

APPENDIX

(a) Attached hereto is a copy of the judgment and opinion of the Court of Appeals of Georgia in its entirety.

(b) Attached hereto is a brief synopsis, with citation

as to the record, of the manner in which the question of the illegality of the evidence objected to was raised in the trial court.

Respectfully submitted,

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APPENDIX A

SHELTON v. STATE

COURT OF APPEALS OF GEORGIA No. 40797

1. Where the rule requiring that witnesses be examined out of the hearing of each other (Code 5 38-1703), has been invoked a witness who has remained in the courtroom during the progress of the trial is not disqualified from testifying.
2. A witness who gives a responsive answer is properly allowed to explain such answer.
3. Where the record does not disclose the grounds upon which a motion for mistrial was made during the trial of the case no question is presented for review.
4. The trial court did not err in admitting in evidence photographs and a record of fingerprints of the defendant for the purpose of establishing identity.
5. One charged with larceny will not be heard to raise nice and delicate questions as to the title of the article stolen.
6. No harmful error is shown by the seventh ground of the motion for new trial.
7. The excerpts of the charge excepted to in special grounds 9, 10 and 11 show no error.
8. A defendant cannot successfully object to evidence allegedly obtained as a result of an illegal search and seizure of another person's property and to which the defendant disclaims any interest.
9. Where an indictment charges in separate counts larceny and receiving stolen goods the State is not required to elect upon which ground it will travel and insist upon a conviction.

10. The evidence did not demand a verdict for the defendant.

The defendant was indicted in a three-count indictment for 1 larceny of a described automobile, 2 receiving stolen property knowing the same to have been stolen, and 3 possessing a stolen automobile knowing that the identification number had been removed and falsified with intent to conceal and misrepresent the identity of said automobile. On the trial of the case the jury returned a verdict of not guilty on the first count and of guilty on the second and third counts. Thereafter, the defendant's amended motion for new trial was overruled and he now assigns error on such adverse judgment.

NICHOLS, Presiding Judge. 1. Special ground 1 of the amended motion for new trial assigns error on the refusal of the trial court to permit a witness for the defendant to testify. The record discloses that the "rule" had been invoked and that the witness had remained in the courtroom for various periods of time during the progress of the trial while other witnesses testified.

Under the decision of the Supreme Court in response to a certified question by this court (Shelton v. State 220 Ga. 610, 140 S.E.2d 839), the witness was not disqualified from testifying in the case and while the defendant did not notify the trial court at that time as to the facts he expected to prove by such witness it was because the trial court refused to permit such showing.

An examination of the expected testimony of such witness contained in the amended motion for new trial shows that while some of such testimony would not have been admissible over proper objection other parts of such expected testimony was admissible and relevant.

Accordingly, the trial court erred in overruling such ground of the defendant's motion for new trial.

2. Special ground 2 complains that the trial court erred in failing to exclude a part of an answer to a question asked a State's witness by the defendant as being not responsive to the question asked. The witness answered the question with a "no sir" and then explained his answer as he is permitted to do. See Marques v. Ross, 105 Ga. App. 133, 138 (123 SE2d 412), and citations. The answer was responsive to the question asked and is therefore distinguishable from cases exemplified by Henderson v. State, 208 Ga. 73 (65 SE2d 175), where the witness stated a legal conclusion, and Mickle v. Moore, 188 Ga. 444 (6) (4 SE2d 217), where the answer was not responsive to the question asked.

3. Special grounds 3 and 5 complain that the trial court erred in failing to grant a mistrial on motion of the defendant, but such grounds do not disclose the grounds on which such motions were made during the trial of the case. "The motion for new trial merely states that counsel made a motion for a mistrial, which was overruled by the court, and nowhere therein is it stated upon what grounds counsel moved the court for a mistrial. The contentions of counsel as shown by this ground as to why a motion for a mistrial should have been granted do not appear to have been urged before the trial court. This ground of the motion for new trial is too defective and incomplete to present any question for decision, and the trial judge did not err in overruling it. Owens v. State, 32 Ga. App. 417, 418 (2) (123 SE 919); Lumbermens Underwriting Alliance v. First National Bank & Trust Co., 100 Ga. App. 217, 223 (5) (110 SE2d

782)," Whitehead v. State, 101 Ga. App. 732 (115 SE2d 429).

4. Under the decision of the Supreme Court in Cooper v. State, 182 Ga. 42 (2) (184 SE 714; 104 A.L.R. 1309), the trial court did not err in admitting in evidence a photograph of the defendant which was identified by various witnesses to connect him with possession of the stolen automobile, and for the same reason a fingerprint record made by one of the witnesses for the State was properly admitted over the defendant's objection. Special grounds 4 and 8 are without merit.

5. Special ground 6 which complains that the trial court erred in refusing a timely written request to charge that the defendant could not be convicted if the automobile was the property of the wife of the person named as the owner in the indictment or the joint property of such person and his wife. As pointed out in Thomas v. State, 125 Ga. 286 (54 SE 182), one charged with larceny will not be heard "to raise nice and delicate questions as to the title of the article stolen." See also Lawrence v. State, 26 Ga. App. 607 (107 SE 621); Morton v. State, 73 Ga. App. 307 (36 SE2d 120), and citations. The trial court did not err in failing to give the charge requested.

6. Special ground 7 complains of the exclusion of certain testimony sought to be elicited from a State's witness while on cross examination. The trial court did not exclude any testimony but only ruled that the question asked was too vague and indefinite, and that it should be more specific. No harmful error is shown by this ground of the motion for new trial.

7. Special grounds 9, 10 and 11 complain of excerpts

of the court's charge. Each of these grounds has been carefully examined and is without merit.

8. Special ground 12 complains of the failure of the trial court to exclude evidence allegedly obtained as a result of an illegal search and seizure so as to make such evidence inadmissible under the decisions of Mapp v. Ohio, 367 U. S. 643 (81 S. C. 1684, 6 SE2d 1081); Dennis v. State, 108 Ga. App. 646 (134 SE2d 519), and similar cases construing and applying constitutional provisions against illegal searches and seizures and the applicability to the admission of evidence in criminal cases.

The evidence objected to in the present case was not procured from any search of the defendant, or of any search of his residence or place of business, or from an automobile to which he claimed a right of possession at the time the evidence was offered, but from the allegedly stolen automobile after the police had determined that it was a stolen automobile. As was held in Jones v. State, 4 Ga. App. 741 (62 SE 482): "A defendant . . . cannot successfully object to testimony offered against him, on the ground that it was obtained by an illegal search and seizure of another person . . ." This ground of the motion for new trial was properly overruled.

9. Special ground 13 of the motion for new trial complains that the trial court erred in refusing to require the State to elect whether to travel and insist upon a conviction upon count 1 (larceny of an automobile) or count 2 (receiving stolen goods). This judgment of the trial court was not error. See Freeman v. State, 35 Ga. App. 223 (1) (132 SE 782), and citations.

10. The evidence adduced on the trial of the case consists of over three hundred pages and it would indeed

serve no useful purpose to set forth such evidence here, and since the case must again be tried the usual general grounds of the motion for new trial will not be passed upon except to state that the evidence did not demand a verdict for the defendant.

Judgment reversed. Hall and Russell, JJ., concur.

COURT OF APPEALS OF THE
STATE OF GEORGIA

Atlanta, March 3, 1965

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered:

J. P. Shelton v. The State

This case came before this court upon a writ of error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed because the trial court erred in overruling the defendant's motion for new trial. Nichols, P.J., Hall and Russell, JJ., concur.

Bill of cost, $15.00

APPENDIX B

MANNER OF RAISING QUESTION IN TRIAL COURT

Tr. 17 Written motion to suppress evidence prior to trial..

Tr. 12 Renewing motion to suppress after jury was empaneled and before any evidence was introduced.

Tr. 13 Renewing motion to suppress during the testimony of Captain Brown.

Tr. 13 By renewing the motion to suppress evidence and objecting to the introduction of seized evidence at the time it was offered by the State.

Tr. 13 By renewing motion to suppress evidence at the conclusion of the State's case and at the conclusion of all the evidence in the case.

Tr. 15 The approval of the grounds of the motion for new trial by the trial judge and certificate that the grounds are true and correct.

Tr. 12 Motion for new trial.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. [redacted] 504

J. P. SHELTON,
Petitioner

v.

STATE OF GEORGIA,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Atlanta Judicial Circuit

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 506

J. P. SHELTON,

Petitioner

v.

STATE OF GEORGIA,

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent prays that the petition for writ of certiorari be denied, giving reasons herein for this position.

CITATION TO OPINION BELOW

In addition to the citations given in the petition, the opinion of the Court of Appeals of Georgia is reported in 111 Ga. App. 351.

JURISDICTION

Whether the jurisdiction of this Court is properly invoked depends upon whether the petitioner for certiorari properly raised in the state court a claim of vio-

lation of some right, privilege or immunity, which he had under the constitution of the United States. Title 28 U.S.C.A., 1257 (3). We doubt that such a question is presented in this case. It may depend, however, upon the construction which this Court may place upon the allegations of the "Motion to Suppress Evidence" (Tr. 17). It will be noticed that on page 16 of the printed petition the petitioner shows that he is relying upon the allegations of his "Motion to Suppress Evidence" and his later renewals of it during the trial and in the Motion for New Trial, as setting forth his "manner of raising question in trial court." This Court will of course on its own motion consider and decide asserted questions of its jurisdiction, regardless of the opinions of litigants. We therefore merely suggest that the language of said "Motion to Suppress Evidence" be carefully scanned and considered on the question of whether jurisdiction is properly invoked.

QUESTION PRESENTED

The Question as set forth on page 2 of the petition is insufficiently stated, in that some necessary elements are omitted:

(a) It fails to state that the car from which the papers were taken was a *stolen* automobile and that the officers did not open the trunk and discover the papers which were introduced until after they had found that the car was stolen. (Testimony of Captain Brown, quoted in Tr. 12 and Tr. 33.)

(b) It fails to state that the car had been *abandoned* for many weeks on a private parking lot, until it was finally impounded and the investigation instituted by the police.

(c) It fails to state that defendant Shelton was *not present* at said opening of the car and seizure of the papers.

(d) It fails to state that defendant Shelton had never asserted any claim of ownership or possessory interest in said car so as to put the police officers on notice of any rights which he might have.

(e) It fails to state that the tag registration of said car was in a "Stanley Mack" of an address in Decatur, Georgia, according to the car registration at the Georgia Motor Vehicle License Bureau, and that the police had made effort to locate such a person and were unable to find such a person. (The address was a hotel, and the hotel clerk testified that no such person as Stanley Mack had lived or stayed there.) (Testimony of P. H. Mell, the hotel clerk, and testimony of Captain Hugh D. Brown, Tr. 32 et seq. show the search made for such person.)

In our opinion the above points should be added to the statement of the question presented, so that it should be stated as follows:

QUESTION RESTATED:

Whether a defendant, charged with a criminal case in a State Court, has standing under the Fourth and Fourteenth Amendment to object to the introduction in evidence of papers and articles obtained through a search by State officers of a stolen automobile which had been hauled into a garage and impounded as an abandoned car because it had been left for weeks at a time upon the parking lot of a large apartment house where it did not belong, not being the car of any occupant of said apart-

ments, and when the defendant was not present at the time of the search of the car, was not the owner, and had never asserted any claim of ownership or possessory interest in said car or any of its contents, so as to put the police officers on notice of any rights which he might have, and when the police officers before searching the car had found that it was a stolen car and that its license tag registration had been issued in name of a supposed person who could not be found or identified and had never lived at the address given on said registration record.

Also involved in this case is the Question whether the search of the automobile and seizure of the evidence was *reasonable,* under all the circumstances of the case.

STATEMENT

The "statement" in the petition for certiorari omits a good many matters of evidence and Record in this case, which seem to us necessary to present a true picture of the Question presented. We shall therefore set forth some of these points, giving the approximate pages of the Transcript. (We regret that we cannot give the exact paging, in all instances, since no exact copy of the Transcript as filed in the Supreme Court is available to use.)

(a) On lines 13 and 14 the Statement refers to "results of a search of the automobile, alleged by the State to have been received and possessed by the defendant. . . ." It should be added that Shelton was *not present* at the search of the car, that it had been hauled by a wrecker to a garage and impounded by the manager of a large apartment building because it had been parked there

without authority on the parking lot of said apartment, and did not belong to any tenant or occupant of said apartment building and was therefore apparently an abandoned car. (See testimony of Mrs. Proctor, Tr. 21, et seq.) Before having the car impounded she had investigated and ascertained the name that the license tag was registered under, and "couldn't locate him" (Tr. 28), so she conferred with some police officers and then had the car pulled to a garage, where the police went and looked it over. She testified that she "didn't know a Stanley Mack, other than the car being registered in his name," and didn't know whether there was a man by that name. (Tr. 30). Witnesses I. L. Harris and P. L. Suddeth testified to the car being hauled by their wrecker to Millirons garage on request of the apartment manager. (Tr. 29-31). A police officer, Capt. Hugh Brown (Tr. 32 et seq.), testified to receiving notice of the car being hauled into Millirons garage, and going there and looking at it; he checked the license tag number and found it to be registered to a Stanley Mack at an address in Decatur, Ga., where he didn't live, and conducted other investigation and found out that "the car was stolen from Rich's parking lot last August." He testified that "we didn't open the trunk" of the automobile "until after we found that the car was stolen." (Tr. 33) In the trunk of the car the officers found certain checks and other articles, which upon investigation by fingerprint experts were discovered to bear the fingerprints of Jay P. Shelton, this defendant.

(b) The *possession* of the automobile by the defendant, proven by the State at the trial, was not possession at the time of the search and seizure by the police officers, nor just prior thereto. It was *possession* at times

several weeks and months before the car was hauled to the garage as an abandoned car. Several witnesses identified Shelton as having driven the car, and having walked to the car, during the period of months that it had been left on this apartment parking lot from time to time. But they didn't know who he was, and it was not ascertained to be a stolen car on those occasions. Mrs. Proctor identified Shelton, in the courtroom at the trial, as the man she had seen at least three times, either driving the car away from the parking lot, or on the parking lot near it, walking. (Tr. 25-28) The defendant vigorously cross-examined Mrs. Proctor as to her identification of him, demanding clothing worn, facial characteristics, ears, eyes, nose, etc. Then some other people (Major Amos and wife), testified to having seen Shelton in the car, and identified him in the courtroom. Then he ended up admitting, in his unsworn statement to the jury as defendant, that he had parked the car there on the apartment house parking lot, but didn't say how many times or what dates.[1] He said he was negotiating to buy or trade the car from the person referred to as Stanley Mack. (Tr. about 46-55)

In his unsworn statement to the jury, Shelton did not even claim that the checks (which bore his fingerprints) belonged to him. He said they fell out accidentally and he picked them up, as an explanation of how his fingerprints got on them. (Tr. 49 et seq.)

(c) Capt. Brown, recalled to the stand (Tr. about

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[1]In Georgia a defendant on trial may now be sworn and testify as a witness in his own behalf, if he so elects (Ga. Laws 1962, page 133), but at his option he may make an "unsworn statement" as formerly, and the unsworn statement is not evidence. cf. FERGUSON v. GEORGIA, 365 U.S. 570.

42-46), testified to several matters that support the State's contention that the search of the car was reasonable and legal under the circumstances: He testified further that he "couldn't locate a Stanley Mack," the name on the automobile registration record for the license tag on the car. (Tr. about 43) He testified that after he was unable to locate a Stanley Mack, he contacted Mr. McKibben of the national automobile theft bureau to ascertain where he could find the confidential number on that model Cadillac. (Tr. 43, also Tr. 32) He testified that one thing that particularly aroused his suspicion that it was a stolen car was that while he was enroute from his police headquarters to the garage to see this car the first time he received radio information that a lady was at the garage attempting to take it away, and when he arrived he found that the lady had gone, that she had been asked to await the arrival of the police who were on their way, and she immediately "got in a cab and went away." (Tr. about 45)

(d) MOTION TO SUPPRESS. In his Appendix B, the petitioner for certiorari shows that the "manner of raising question in trial court" was by written motion to suppress evidence prior to trial, and renewing the motion from time to time during the trial when the evidence was being presented. By examining the motion to suppress, (Tr. 17) it will be seen that it contained *no claim* that the car was the property of Jay Paul Shelton, and contained *no claim* that he had ever been in possession of it, and contained *no claim* that any of the articles seized from the said car belonged to him or had ever been in his possession.

REASONS FOR NOT GRANTING THE WRIT

I. The Search was Reasonable

The prohibition of the Fourth Amendment is against *unreasonable* searches and seizures. A search is invalid only if unreasonable. *Lane* v. *U. S.* 321 F.2d 573. Cert. den. 377 U.S. 936, 84 S.Ct. 1340.

In *Lanza* v. *New York,* 370 U. S. 139, on page 143, 83 S.Ct. 799, the Supreme Court said that areas protected by this guarantee might be a house, a store, or an apartment, and that "an automobile may not be unreasonably searched."

In *U. S.* v. *Stokely,* 311 F.2d 593, it was held that search of an automobile trunk, loaded with non-tax-paid whiskey, by state troopers, was not unreasonable under the circumstances of that case, though the defendant driver of the vehicle was present and had been stopped only for reckless driving.

Reasonableness of the search and seizure must be determined on the facts and circumstances of each case. *Com.* v. *Bosurgi,* 190 A.2d 304 (Pa.) cert. den. 375 U. S. 910, 84 S.Ct. 204.

The Fourth Amendment does not secure persons against any and all searches and seizures, but only against *unreasonable* searches and seizures. *Naylor* v. *Walker,* 206 F.Supp. 544; cert. den. 371 U.S. 957, 83 S.Ct. 514.

Com. v. *Richards* (Pa.) 182 A.2d 291 (10); appeal dism. 373 U.S. 376, 83 S.Ct. 1313.

In *State* v. *Brindley* (Conn. 1963) 200 A.2d 247, a motor vehicle was stopped by officers to check the windshield wiper, and while so checking they saw burglar

tools in the car, and they learned that one of the occupants had once served a term for burglary; the court held reasonable the search and seizure of the tools.

In the light of all the circumstances shown in the present case, the search of the abandoned and impounded automobile by the police officers was reasonable, especially after the investigation showed that it was a stolen car and that the person in whom the license tag was registered could not be found and had given a false address.

II. Shelton did not have standing

But for another reason, the petitioner in the present case is not entitled to the relief sought. Regardless of the question of the legality or illegality of the search and seizure, Shelton does not have "standing" to complain. He was not the owner of the car, and didn't even claim in his motion to suppress that he was the owner or had ever been in possession of it. The most that he claimed in his motion to suppress was that "the purported and apparent owner of said car, Stanley Mack, had requested and authorized the defendant to take possession of the said automobile." (Paragraph 4 of motion)

The federal courts in numerous cases, and with unanimity, have denied standing to one not the victim of an unconstitutional search and seizure to object to the introduction in evidence of that which was seized. *Goldstein* v. *United States,* 316 U.S. 114, at 121, 62 S.Ct. 1000 at 1004. A footnote under the above statement in *Goldstein* says: "The principle has been applied in at least fifty cases by the Circuit Courts of Appeals in nine circuits, and in the Court of Appeals for the District

of Columbia, not to mention many decisions by District Courts."

The petitioner for certiorari seems to rely principally upon *Jones* v. *United States,* 362 U.S. 257. But in that case the defendant Jones was the *occupant* of a certain apartment and was *present* in that apartment at the time officers found narcotics in unstamped packages, as alleged, and he had been seen to put his hand to the place where the narcotics were found. In his federal district court trial it was contended that he did not have standing to object to the introduction of the evidence against him, since he was not the owner of the apartment but a mere invitee. The Court held that he did have standing, and said that "* * anyone legitimately on premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him."

The present case is far different, and not controlled by the above decision, Shelton not being the occupant of the car nor present at the search of it, and the car having been parked for extended periods on a parking lot where it didn't belong and having been finally hauled to a garage as an abandoned car and the police notified, and the police having investigated and having been unable to locate such a person as the one named on the license tag registration, and having ascertained that it was a stolen car. This situation does not put Shelton in position to raise questions as to the right of the officers to make the search of the car.

In *Jeffers* v. *U. S.,* 187 F.2d 498 (4), on page 500, affirmed 342 U.S. 48, 72 S.Ct. 92, the language of *Goldstein,* supra, was repeated, to the effect that the federal

courts in numerous cases, and with unanimity, have denied standing to one not the victim of an unconstitutional search and seizure to object to the introduction in evidence of that which was seized.

III. Ruling of State Appellate Court is issue here, not language used

In his motion for new trial in the State court, Shelton contended that the articles found in the automobile and used in evidence against him "were obtained by an illegal search and seizure in violation of the Constitution of the United States." (Tr. 12-15) And in his Motion to Suppress the evidence he named the constitutional provision as the Fourth Amendment, (Tr. 17), contending that the search and seizure *"violated his rights* under the Fourth Amendment of the United States."

The *ruling* of the Court of Appeals of Georgia was that the search and seizure and the use of the evidence against him in the trial did *not violate* his constitutional rights as contended.

The petition for certiorari complains of certain language of the opinion of the Court of Appeals of Georgia, seeking to have the case decided upon the basis of whether the language of the opinion was right or wrong. But it is not the language of the opinion which is under review here. It is the ruling.

The Supreme Court "reviews judgments, not statements in opinions." *Black* v. *Cutter Laboratories,* 351 U.S. 292 (a), 297; 76 S.Ct. 824.

So the question here is whether the ruling was correct that the seized evidence used against Shelton did not violate the constitutional standards set forth in the

Fourth Amendment. In *Mapp* v. *Ohio*, 267 U.S. 643, it was held that the Fourth Amendment was made applicable to the States through the Fourteenth Amendment. And in *Ker* v. *California*, 374 U.S. 23, 33, the Court said: "* * * Although the standard of reasonableness is the same under the Fourth and Fourteenth Amendments, the demands of our federal system compel us to distinguish between evidence held inadmissible because of our supervisory powers over Federal courts and that held inadmissible because prohibited by the United States Constitution."

The primary purpose of the constitutional guarantees is to prevent unreasonable invasions of the security of the people in their persons, houses, papers and effects. No unreasonable invasion was made of any rights possessed by Jay P. Shelton in this case.

CONCLUSION

For all the foregoing reasons, Respondent urges this Court to decline to issue the writ of certiorari.

Respectfully submitted,

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J. WALTER LECRAW,
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CERTIFICATE OF SERVICE

GEORGIA, FULTON COUNTY

I, J. Walter LeCraw, of counsel for the State of Georgia, respondent in the foregoing case, certify that I have this day served copies of the foregoing Brief of Respondent in Opposition to petition for writ of certiorari upon Petitioner, by depositing in the United States Post Office in Atlanta, Georgia, two copies of same in an envelope addressed to Wesley R. Asinof, Attorney, 419 Atlanta National Building, Atlanta, Georgia, 30303, counsel of record for petitioner, with sufficient first class postage affixed thereto.

This October 5, 1965.

J. WALTER LECRAW,
Assistant Solicitor General
Atlanta Judicial Circuit.

IN THE

Supreme Court of the United States

October Term, 1965

NUMBER 506

J. P. SHELTON,

Petitioner

VS

THE STATE OF GEORGIA,

Respondent

PETITIONER'S REPLY TO BRIEF OF RESPONDENT

1.

Counsel for respondent erroneously indicates at page 2 of his brief that petitioner relies only upon the allegations contained in the written motion to suppress with respect to "manner of raising question in trial court." While the written motion was no doubt adequate to raise the question, it should be noted that petitioner also objected, orally, "to the introduction of seized evidence at the time it was offered" (page 16 of printed petition, paragraph 4). The record further indicates that the petitioner objected *not only* to the admission in evidence

of the papers seized from the trunk of the automobile, but also to the *testimony* of Captain Brown relating to his search of the automobile, and *his inspection* of the identification numbers thereon, which search and inspection of numbers caused him to conclude that the automobile was a stolen car.

2.

Counsel for respondent erroneously states at pages 2 and 3 of his brief that the automobile "had been abandoned for many weeks on a private parking lot, until it was finally impounded and the investigation instituted by the police." Actually, the record on file in this court shows without dispute the following facts:

The search of the vehicle occurred September 6, 1963, about 4 p.m. at Millirons Garage in East Point, Georgia. Petitioner had entered into an agreement on September 2, 1963, to purchase the automobile from Stanley Mack. Petitioner had keys and a bill of sale to the automobile. On September 4, 1963, petitioner parked the automobile on the parking lot of Hycourt Apartments in East Point. On September 5, 1963, Mrs. Proctor, manager of the apartments, had the automobile impounded by Millirons Garage because it did not belong to any of her tenants and she had been unable to contact the registered owner, Stanley Mack. That same day, both Mrs. Proctor and employees of Millirons Garage notified the East Point Police of the impounding of the automobile. On September 6, 1963, petitioner both personally and by representatives contacted Millirons Garage and the East Point Police in an effort to reclaim the automobile, but his efforts were unsuccessful, because the East Point Police

had instructed the Garage not to release the automobile without written authorization from the Police Department. Captain Brown of the East Point Police Department commenced an investigation of the automobile about 4 p.m. on September 6, 1963, by phoning the tag number in to the State Motor Vehicle Bureau and ascertaining that it was registered to Stanley Mack of Decatur, Georgia. Captain Brown was unable to locate Mr. Mack. Neither the tag number on the automobile, nor the vehicle identification number on Stanley Mack's registration, indicated that the automobile had been stolen. Captain Brown then, without first obtaining a warrant, and without knowing that the automobile had been stolen, gained entrance to the automobile by force, and inspected a number plate on the doorpost, which number corresponded to the number under which Stanley Mack had licensed it. However Captain Brown, because of his "suspicions", testified that he "kept digging" and found a "confidential" number on the frame of the vehicle, under the hood; that he phoned this "confidential" number in to the Atlanta Police, and was informed that an automobile bearing that number had been reported stolen. Captain Brown then, with other officers assisting him, removed the doorpost number plate from the automobile (State Exh. 9, this being the identification number plate referred to in Count 3 of the indictment as having been "falsified"); he then obtained a master key to the trunk and took therefrom various objects which were admitted into evidence at the trial over petitioner's objection.

Without Captain Brown's *testimony* relating to his search of the vehicle, inspection and removal of a number plate from the doorpost, and his finding of the con-

fidential number on the frame of the vehicle, the state's case would have failed.

3.

Counsel for respondent erroneously states at page 3 of his brief that petitioner "never asserted any claim of ownership or possessory interest in said car." Actually, petitioner alleged in the written motion to suppress, filed before the trial, that he had been authorized by Stanley Mack "to take possession of said automobile." Then, testimony and petitioner's unsworn statement, adduced at the trial, showed, as noted above, that petitioner was buying the automobile from Stanley Mack, that petitioner personally had parked the automobile at Hycourt Apartments less than 48 hours before the illegal search occurred, and that he attempted unsuccessfully to reclaim the automobile September 6, 1963, just before the search and seizure occurred.

4.

Counsel for respondent has confined his entire argument to the papers which were seized from the trunk of the automobile, and fails to recognize that the motion to suppress evidence, as well as complementary motions made during the course of the trial, complained also of the search itself, *testimony* of Captain Brown relating to the search of the vehicle, and the *number plate* which Captain Brown removed from the doorpost of the automobile, which number plate was introduced in evidence over petitioner's objection, as State's Exhibit 9, in support of the allegations contained in Count 3 of the indictment, viz. that petitioner was in *possession* of the ve-

hicle, knowing that an identification number of said vehicle had been falsified.

Respectfully submitted,

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